No. 92-1834

Supreme Court, U.S.
F I L E D
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IN THE
SUPREME COURT
OF THE
UNITED STATES OF AMERICA

OCTOBER TERM, 1992

EDGAR F. BRADLEY

PETITIONER

versus

STATE OF OHIO

RESPONDENT

PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF OHIO

PETITION FOR WRIT OF CERTIORARI

EDGAR F. BRADLEY
IN PROPRIA PERSONA (NOT PRO-SE)
3RD JUDICIAL DISTRICT
C/O 1659 WAPAK FISHER RD.
WAPAKONETA, OHIO STATE/TDC
(419) 738-8044

QUESTION PRESENTED FOR REVIEW

1. Whether an accused can be transported against his will to an adjoining county (in which there was no crime allegedly committed by the accused) and there be compelled to give his fingerprints pursuant to a local ordinance, in lieu of the fact that a court in that county has ruled that he cannot.

LIST OF PARTIES TO THE PROCEEDINGS IN THE COURT BELOW

1. Edgar F. Bradley - In Propria Persona
   Petitioner/Appellant

2. Sheriff Tom Hamman,
   Defendant/Appellee

3. State of Ohio,
   Respondent

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No. _____

IN THE SUPREME COURT OF THE UNITED STATES OF AMERICA

OCTOBER TERM, 1992

EDGAR F. BRADLEY, PETITIONER

VS.

STATE OF OHIO, RESPONDENT

PETITION FOR A WRIT OF CERTIORARI

The Petitioner, Edgar F. Bradley, respectfully petitions the Supreme Court of the United States of America that a writ of certiorari be issued to review the judgment of the Ohio Fourth Appellate District Court of Appeals, entered in the above entitled case on October 8, 1992, and the related

judgment of the Supreme Court of Ohio, dated February 24, 1993, overruling Petitioner's Motion to certify the record to the Ohio Supreme Court for a review.

OPINIONS BELOW

The opinion of the Ohio 4th Appellate District Court, issued October 8, 1992, is reproduced in Appendix A.

The judgment filed in the Chillicothe Municipal Court, issued October 2, 1993, is reproduced in Appendix B.

The judgment filed in the Court of Common Pleas, Ross County, Ohio issued January 15, 1992 is reproduced in Appendix C.

The judgment filed in the Ohio Supreme Court, issued March 12, 1993, is reproduced in Appendix D.

JURISDICTION OF SUPREME COURT

The final judgment of the Ohio 4th Appellate District Court (Ross County, Ohio, Court of Appeals) was entered on October 8, 1992. The Entry denying a motion for an order directing the 4th Appellate District Court (Ross County, Ohio Court of Appeals) to certify its record was overruled on March 12, 1993.

The Supreme Court of the United States of America has jurisdiction to review the issues presented herein pursuant to 28 U.S.C. 1254 (1) and Rule 13 of the Rules of the Supreme Court.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Sixth Amendment to the Constitution of the United States of America, particularly the highlighted section below, which provides:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, **by an impartial jury of the State and district wherein the crime shall have been committed,** which district shall have been previously ascertained by law,..."

This case also involves the Fifth Amendment to the Constitution of the United States of America, particularly the highlighted section below, which provides for the right to protection of personal property (fingerprints):

"No person shall be held to answer for a capital, or otherwise infamous crime, ...nor shall be compelled in any criminal case to be a witness against himself, **nor be deprived**

of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation."

This case also involves the First Amendment to the Ohio Constitution, which is pursuant to the Fifth Amendment of the Constitution of the United States of America, and which also provides:

"All men are, by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety."

This case also involves the statutory provision of Ohio Revised Code § 109.60 (reproduced in its entirety in Appendix F) which is pursuant to both the 1st Amendment to the Ohio Constitution and to the 5th Amendment to the Constitution of the United States of America in regards to the protection of a certain kind of personal property, namely fingerprints, and which

provides in pertinent part:

"...Should any accused be found not guilty of the offense charged or a nolle sequi entered in any case, then the fingerprints and description shall be given to the accused upon his request..."

This case also involves the last section of Article I § 10 of the Ohio Constitution which is pursuant to the analagous provision in the 5th Amendment to the Constitution of the United States of America, before mentioned, and which also provides, in pertinent part:

"No person shall be twice put in jeopardy for the same offense."

This case also involves a conflict in judgment between the lower courts among the several states and the Supreme Court of the United States.

STATEMENT OF THE CASE

On May 24, 1991, Edgar F.Bradley, Petitioner, was stopped in Jackson County, Ohio by Trooper Nemeth of the Ohio State Highway Patrol and cited for 65 in a 55, resisting arrest, and failure to comply. Petitioner was then taken across county lines and incarcerated in Ross County Jail, Chillicothe, Ohio, which was serving as a guest facility for Jackson County jail because the Jackson facility was full on that Memorial Day Weekend.

Petitioner refused to answer booking questions or to voluntarily give his fingerprints in response to requests of the Chillicothe Jail staff, claiming that he had a right not to witness against himself by providing any evidence. Petitioner's fingerprints were NOT forcibly taken from

him.

26 days later, on June 19, 1991, Petitioner was arrested again, while on his way to a scheduled court appearance in connection with the first arrest, in Jackson County Courthouse by a Ross County Deputy Sheriff, on a complaint of Obstruction of an Official in the Performance of his Duty (Chillicothe Municipal Ordinance § 525.07 A&B, and Ohio Revised Code § 2921.31, reproduced in its entirety in Appendix E) The alleged obstruction allegedly occurred during Petitioner's stay as a guest prisoner in the Chillicothe Jail (Ross County) over the Memorial Day weekend, in connection with his arrest in Jackson County for allegedly resisting arrest. The Petitioner was then taken by the Ross County Deputy Sheriff from Jackson County, across County lines against Petitioners objections and without an

Attorney present, and then and there fingerprinted and locked up in the Chillicothe jail.

The alleged violation for which the Petitioner was incarcerated, (O.R.C. § 2921.31), took place in Ross County, not Jackson County. The original arrest (for resisting arrest) in Jackson County was a separate charge and occurred in a different county.

On August 29, 1991 Petitioner filed a Complaint for Replevin in Chillicothe Court of Common Pleas, Case No. 91-CI-254, Edgar F. Bradley v. Sheriff Tom Hamman, seeking a replevin of Plaintiff's fingerprints.

On September 20, 1991, Plaintiff Edgar F. Bradley filed a Motion for Order of Possession, with Affidavit in support, in the Chillicothe Common Pleas Court, Case No. 91-CI-254.

On October 2, 1991, Petitioner was tried in Chillicothe Municipal Court, Case No. 91-CRB-1247, on the alleged Obstruction charge, pursuant to his initial refusal to give fingerprints voluntarily. A judgement of acquittal was entered and Petitioner was found not guilty of the Charge of Obstructing an Official in the Performance of his Duty.

On January 16, 1992, a Journal Entry was filed in Chillicothe Common Pleas Court dismissing Petitioner's complaint for replevin of his fingerprints.

On January 31, 1992, a Notice of Appeal was filed by Petitioner in Fourth Appellate District Court of Appeals for Ross County, Ohio in the fingerprint Replevin case. Appeal case No. CA-1850 was assigned.

On March 19, 1992, Petitioner's Appeal Brief was filed, Case No. CA-1850.

On October 9, 1992, a Judgment Entry and Opinion were filed by the Court of Appeals for the 4th Appellate District of Ohio, Ross County, affirming the judgment appealed from. The judgment and opinion found that the arrest of May 24, 1991, which **DID NOT** involve the taking of fingerprints, resulted in a finding of guilty in a **JACKSON COUNTY** case, and the court ruled that the provisions of O.R.C. § 109.60, requiring return of fingerprints allegedly did not apply.

On October 30, 1992, Petitioner filed a Notice of Appeal with the Ohio Supreme Court.

On November 24, 1992, Petitioner filed a Memorandum in Support of Jurisdiction with the Ohio Supreme Court, Case No. 92-2861.

On February 24, 1993, the Supreme Court of Ohio filed an Entry overruling the

Motion for an Order directing the Court of Appeals for Ross County to certify its record, and denied jurisdiction of the case.

REASONS FOR GRANTING THE WRIT OF CERTIORARI

A. INTRODUCTION

This case concerns an issue that has not been ruled upon before in the Supreme Court of the United States of America, and which is a question of gravity and general importance. The facts in the case demonstrate clearly that the lower courts were faced with a question of jurisdiction. The lower courts had to decide:

1. Whether it was lawful for the Petitioner to be arrested in Jackson County for an alleged violation in Ross County, and then forcibly transported against his will to Ross County, fingerprinted and booked in Ross County jail, when actually Petitioner did not commit any crime in Ross County for which fingerprints were required to be taken.

2. After a Ross County Municipal Court found the Petitioner not guilty of any crime in Ross County, a Ross County Common Pleas Court, the 4th Appellate District Court for Ross County, Ohio, and the Ohio Supreme Court, had to decide whether said Petitioner had a right to the return of his fingerprints in accordance with the provisions of Ohio Statute R.C. 109.60 which provided for the return of fingerprints upon a finding of not-guilty of the alleged offense **FOR WHICH THE PRINTS WERE TAKEN.**

3. In making their decisions the lower courts made serious errors regarding jurisdiction, in that their opinion presupposed that a provision in a statute regarding the outcome of a case extends to the outcome of a totally different case in a different county.

4. In making their decisions the lower

courts ignored the maxim that courts are bound by the plain meaning of statutory language, as provided in Griffin v. Oceanic Contractors, Inc., 458 US 564, 570, 73 LEd 2d 973, 980, 102 SCt. 3245 (1982) In making their decision the courts violated the substantive rights of the Petitioner, and created a conflict between decisions of the Supreme Court and the courts of the several states.

B. IT IS A VIOLATION OF THE SIXTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES TO DECIDE A CASE IN ONE COUNTY BASED UPON AN ALLEGED CRIME IN A DIFFERENT COUNTY.

Petitioner was arrested in Jackson County, Ohio, for an alleged violation of a State Statute in Ross County, namely the alleged Obstruction of an Official in the Performance of his Duty, Ohio Revised Code

§ 2921.31 (Reproduced in its entirety in Appendix E). But when that cause came to trial in Municipal Court (Case No. 91-CRB-1247, City of Chillicothe v. Edgar F. Bradley) the Accused was found not guilty. A related action was commenced by the Accused in Common Pleas Court to replevin his fingerprints which were improperly taken. The Common Pleas Court refused to grant replevin, stating that the taking of fingerprints in connection with the Ross County charge of Obstruction was the culmination of a previous attempt to take fingerprints during incarceration in Ross County in connection with a Jackson County charge of Resisting Arrest (Case No. 91-CRB-575, State of Ohio v. Edgar F. Bradley). The Ross County Appellate Court (4th District Appellate Court of Ohio) in Case No. CA-1850, Edgar F. Bradley v. Sheriff Tom

Hamman, also denied the replevin based upon a finding of guilt in a previous charge of Resisting Arrest in Jackson County (Case No. 91-CRB-575). The Lower courts, in considering Petitioner's demand for the return of his fingerprints pursuant to the clear language of an Ohio Statute, violated Petitioner's 6th Amendment right to trial of a crime in the district wherein it is committed by basing their decision upon an alleged crime that transpired in a separate County.

Article I § 10 of the Ohio Constitution and the Fifth Amendment to the United States Constitution both provide, in pertinent part:

"...No person shall be twice put in jeopardy for the same offense..."

It is a violation of both the Ohio Constitution and the Constitution of the

United States of America for a State Appellate Court to deny the Petitioner a remedy provided in a State Statute (Ohio Revised Code § 109.60) to which he otherwise would be entitled as a matter of law, upon a finding of innocence in the charge for which the prints were taken, based upon the finding of guilt in a previous charge in a separate county. The Statutory remedy found in O.R.C. § 109.60 provides for a return of fingerprints when requested in cases for which Petitioner is found not guilty:

> "...should any accused befound not guilty OF THE OFFENSE CHARGED, then said fingerprints and description shall be given to the accused upon his request."
>
> (O.R.C. § 109.60, emphasis added.)

The pertinent part of O.R.C. § 109.60, quoted above, is pursuant to the Petitioner's substantive right to protection of personal property as provided in the 1st Amendment to the Ohio

Constitution:

"All men are, by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety."

(Ohio Constitution Article I: Bill of Rights, Right to freedom and protection of property.)

Statutorily, the Petitioner's previous case, Jackson County Municipal Court Case No. 91-CRB-575, is an unrelated case, and should not have been used to justify the denial of a statutory right.

The Fourth Appellate District Court of Appeals found that:,

"It is readily apparent that the sheriff initially sought to fingerprint appellant because appellant had been arrested on charges of speeding and resisting arrest."

(Opinion, Fourth Appellate District of Ohio, Case No. 92-CA-1850, Attached Exhibit "A"

But the fact is that the fingerprints were

taken pursuant to a charge of "Obstructing an Official in the Performance of His Duty" not "Resisting Arrest".

The mental state of the arresting officer, as a matter of law, has nothing to do with the taking of fingerprints. It is "twice jeopardy" for the Apellate Court to rule:

> "The fingerprints appellee obtained were the culmination of an arrest process initiated by the speeding and resisting arrest charges."
>
> (Opinion, Fourth Appellate District Court of Appeals, Ross County, Case No. CA-1850, attached Exhibit "A".)

It was made clear by the Chillicothe Municipal Court, in Case No. 91-CRB-1247, Obstructing Official Business, that the two cases were unrelated. The Chillicothe Municipal Court held that:

> "...the Court notes that there was authority to go ahead and take the fingerprints and go ahead and take the photographs whether the Defendant would cooperate or not. Now I would note that

we are not at all concerned with the lawfulness of the original arrest in this case...We're not really concerned with anything that happenned in Jackson County...we're concerned only with the booking procedure in this case and the issues presented by that..."

(Chillicothe Municipal Court Case: City of Chillicothe v. Edgar F. Bradley, 91-CRB-1247, Transcript of proceedings, page 55, lines 17-24 and page 56 lines 1-13, attached Exhibit "B".)

The different conclusions and conflict between the lower courts regarding the effect of the original arrest in Jackson County on the events which transpired in Ross County has culminated in a situation which can only be resolved by the Supreme Court of the United States.

The Municipal Court of Chillicothe rightfully concluded that the events transpiring in Jackson county did not affect anything in the Case No. 91-CRB-1247 (Obstruction of an Official). But the Common Pleas Court for Ross County, and

the Appellate Court for Ross County, and the Supreme Court of Ohio (for it's refusal to review the case) all concur that the speeding and resisting arrest charges tried in Jackson County did affect the trial for Obstruction in Ross County. Both Courts cannot be right. The Supreme Court of Ohio refuses to review the issue and resolve it. The Supreme Court of the United States is the Court of final review to settle the question. This conflict was pointed out in Petitioner's Memorandum in Support of Jurisdiction to the Ohio Supreme Court, but that Court refused to take jurisdiction of the case.

In addition, there is ample case law to support the Petitioner's assertion that fingerprints should not have been taken in Ross county for an alleged crime in Jackson County. No crime was committed in Ross

County for which fingerprints should have been taken.

In Davis v. Mississippi, 394 U.S. 721, 89 SCt. 1394, 22 LEd(2d) 676 (1969), it is clear that fingerprints cannot be taken in the absence of probable cause. Suspects cannot be rounded up and fingerprinted, and if they are, their fingerprints cannot be used as evidence against them because it is a violation of their rights. In Davis v. Mississippi the Supreme Court ruled that fingerprints are property:

> "...Fingerprint evidence is no exception to the rule that all evidence obtained by searches and seizures in violation of the Constitution is inadmissible in a State Court."

(Davis v. Mississippi, 394 U.S. 721, Pp. 723-724, 89 SCt. 1394, 22 LEd(2d) 676 (1969))

Obviously there is a conflict between decisions of State and Federal Courts on an issue of gravity and general importance,

namely the Constitutional right to be protected in one's personal property and effects.

Certainly there was an issue of whether or not Petitioner violated a State Statute when he refused to cooperate in giving his fingerprints, and that issue was resolved in Petitioner's favor in trial, **BUT NO CRIME HAD OCCURRED IN THAT COUNTY WHICH JUSTIFIED THE TAKING OF FINGERPRINTS IN THE FIRST PLACE**, and so the taking of fingerprints based upon an action in another county, tried by another court, was an unwarranted taking of private property. The principle involved here is one of twice jeopardy. The Petitioner feels he is being held twice accountable for his actions in Jackson County, once during trial in Jackson, and again in Ross County when the Appellate Court refused to give his fingerprints back,

and based that refusal upon a guilty verdict in a case in Jackson County, where no fingerprints were taken.

CERTIORARI SHOULD BE GRANTED TO RESOLVE CONFLICTS IN PRINCIPLE AMONG THE LOWER COURTS AND THE SUPREME COURT OF THE UNITED STATES.

The principle of twice-jeopardy applies to statutory remedies as well as convictions. Article I § 10 of the Ohio State Constitution states in part:

"...No person shall be twice put in jeopardy for the same offense."

It is a violation of Article I § 10 of the Ohio State Constitution for a statutory remedy (O.R.C. 109.60) which is pursuant to a substantive right of the Fifth Amendment of the Constitution of the United States of America and to the Ohio Constitution's right to protection of personal property, to be judicially or administratively disallowed

by a lower court based upon the finding of guilt in a previously decided and statutorily unrelated case, particularly when the lower courts in the same State have exercised a conflict in principle by ruling separately regarding the separateness of two cases.

CONCLUSION

WHEREFORE, Petitioner respectfully submits the following propositions of law for review by the Supreme Court of the United States, to wit:

1. That it is unlawful for the accused to be arrested by a Sheriff from a different county, transported over his objections with no Attorney present, and fingerprinted in a different county from that in which any crime has allegedly occurred.

2. That after a finding of not guilty in a case for which the fingerprints were

taken, the courts can lawfully refuse to return the fingerprints in contravention to a State Statute written pursuant to a substantive right which clearly requires the prints to be returned upon demand.

3. That in making their decisions the lower courts made serious errors regarding jurisdiction, in that their opinion presupposed that a provision in a statute regarding the outcome of a case extends to the outcome of a totally different case in a different county, in contravention to the substantive right of all accused to be tried in the county in which the offense occurred, and in violation of the accused's protection against twice jeopardy.

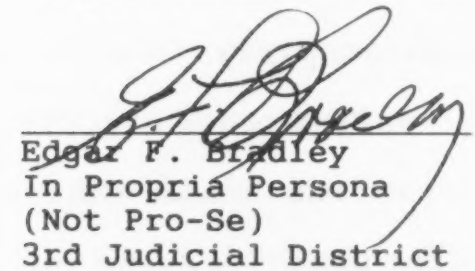
4. That in making their decision the lower courts ignored the maxim that courts are bound by the plain meaning of statutory language, as provided in Griffin v.

Oceanic Contractors, Inc., 458 U.S. 564, 570. 73 LEd. 2d 973, 980, 102 S.Ct. 3245 (1982).

5. That in making their decision the lower courts created a conflict between decisions of the Supreme Court of the United States and the State courts, conflicts, moreover, which address issues of gravity and general importance.

THEREFORE, CERTIORARI SHOULD BE GRANTED.

Respectfully Submitted,



Edgar F. Bradley
In Propria Persona
(Not Pro-Se)
3rd Judicial District
C/O 1659 Wapak Fisher Rd.
Wapakoneta, Ohio State/TDC

CERTIFICATE OF SERVICE

I, Edgar F. Bradley, hereby certify that I have mailed, by First Class U.S. Mail, postage prepaid, a true and correct copy of the foregoing Petition for Certiorari to Richard G. Ward, Prosecuting Attorney, 20 South Paint Street, Chillicothe, Ohio 45601, and to the Supreme Court of the United States, Office of the Clerk, #1, First Street, N.E., Washington D.C., 20543, this 17 day of May, 1993.

Edgar F. Bradley

AFFIDAVIT OF VERIFICATION

STATE OF OHIO)
) SS
COUNTY OF AUGLAIZE)

Edgar F. Bradley, being first duly sworn upon his affirmation, deposes and says that the above Petition for Writ of Certiorari is a true and correct relation of the facts.

Respectfully Submitted

Edgar F. Bradley
C/O 1659 Wapak Fisher Rd.
Wapakoneta, ohio State/TDC

Seal:

Subscribed and sworn to before me, a Notary Public, on this 10th day of May, 1993

Janet Burns
Notary Public, My Comm. expires: My Commission Expires: 8/19/97
8/19/97